IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5144 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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TEJRAM PANNALAL TAILOR - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR ANAND L SHARMA for Petitioner(s) : 1,
MR SP HASURKAR, AGP for Respondent(s) : 1-2
RULE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 24/07/2006
ORAL JUDGMENT

1. The petitioner, an employee with the State Government accepted voluntary retirement w.e.f. 30.06.1996 and his pension etc. came to be fixed as per Rules. On 23.05.1997 the petitioner was appointed on a contractual basis as legal officer in the

Commissionerate, Women and Child Development, Government of Gujarat, Ahmedabad on the terms and conditions provided in Government Resolution dated 23.12.1996 which was admittedly annexed to the order of appointment. Thereafter, due to reshuffling of the departments the petitioner was once again contractually appointed by Resolution dated 22.07.1997 w.e.f. 09.06.1997 upto 31.05.1998 on the same terms and conditions i.e. the terms and conditions mentioned in Government Resolution dated 23.12.1996.

2. Upto September, 1997 the petitioner was getting Temporary Increase and other allowances on the pension of the petitioner, but in September 1997, the Temporary Increase and other allowance came to be stopped by Pension Payment Officer i.e. respondent No.4. It is not necessary to enter into the narration of various representations made by the petitioner from time to time and the response of the respondent authorities. Suffice it to state that the respondent authorities ultimately placed reliance on Resolution dated 19.11.1997 by which Paragraph No.2(3)(b) came to be inserted and included in earlier Resolution dated

23.12.1996. By the said inclusion it was specified that in case of a contractual appointment during the period of such contractual appointment T.I. will not be admissible on the pension fixed. The respondent authorities are relying on Paragraph No.2(3) of the original resolution dated 23.12.1996 as well as the insertion by way of Paragraph No.2(3)(b) vide Resolution dated 19.11.1997 to resist the claim made by the petitioner.

3. Heard the learned advocate for the petitioner and the learned Additional Government Pleader, Mr.S.P. Hasurkar.

4. On going through the original Resolution dated 23.12.1996 it is apparent that vide Paragraph No.2(3) it is stated that an employee will be entitled to remuneration which will be calculated by deducting from the pension the total remuneration available. It is only by way of Resolution dated 19.11.1997 by insertion of sub-paragraph (b) of Paragraph No.2(3) that it is stated that T.I. will not be admissible on the pension fixed. Therefore, in these circumstances, it becomes

apparent that in the first resolution dated 23.12.1996 there was an ambiguity which was required to be clarified. Alternatively, it could be urged that there was no ambiguity and a specific provision came to be made for a further deduction. In any view of the matter the action of the respondent authorities cannot be upheld, at least till 23.11.1997. This is all the more so considering the fact that from the date of contractual appointment i.e. 23.05.1997 to September 1997, the petitioner was being granted the T.I. without deducting the same from the pension. In the circumstances, the petition is allowed.

5. The respondent authorities are directed: (i) not to effect recovery for the amount already paid upto September 1997 and, (ii) pay the balance amount effective from September 1997 upto 19.11.1997. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*